

# **FINAL STATEMENT OF REASONS**

## **Update of Initial Statement of Reasons**

All of the information provided in the Initial Statement of Reasons is accurate and current. However, in response to public comments (detailed below) the originally proposed text in subdivision (d)(1) of Section 968.44 was amended. The adopted regulation differs from the regulation as noticed on April 08, 2005 as follows:

- The requirement that explanatory text and/or graphics be “permanently displayed” on the firearm was further clarified as meaning “permanently displayed by engraving, stamping, etching, molding, casting, or other means of permanent marking.”
- The requirement that explanatory text be readable to a person of “normal visual acuity” was replaced with the requirement that each letter of text have a minimum height of 1/16 inch.
- The requirement that the entire chamber load indicator be of a distinct color contrast to the firearm was amended to specify that the actual “loaded” indication must be of distinct “color” contrast and the explanatory text and/or graphics must be of a distinct “visual” contrast.
- The requirement that the text and/or graphics and the “loaded” indication together inform a reasonably foreseeable adult user of the pistol, that a round is in the chamber, without requiring the user to refer to a user’s manual or any other resource other than the pistol itself was added to the proposed regulation. This requirement is already specified in Penal Code section 12126(c) but was added to the proposed regulation for clarity.

## **Local Mandate Determination**

The proposed regulation does not impose any mandate on local agencies or school districts.

## **Alternatives Determination**

The Department has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

## **Request For Early Effective Date**

The Department is requesting that this file be effective upon filing with the Secretary of State. Pursuant to Penal Code (PC) sections 12125 and 12126, only handguns that are on a DOJ roster

of handguns identified as not “unsafe” can be sold by licensed firearms dealers in this state. Beginning January 1, 2006, these laws also mandate that to be placed on the DOJ roster (handguns already on the roster are excluded), rimfire semiautomatic pistols must have a magazine disconnect mechanism and center-fire semiautomatic pistols must have either a chamber load indicator or a magazine disconnect mechanism. On January 1, 2007, center-fire semiautomatic pistols will be required to have both a chamber load indicator and a magazine disconnect mechanism. Currently, sections 968.44 and 968.46 of the California Code of Regulations establish various procedures for DOJ certified laboratories conducting handgun safety tests. The proposed amendments to the existing regulations will provide DOJ certified laboratories and firearm manufacturers with essential specifications relative to the chamber load indicator and magazine disconnect mechanism requirements. Although firearm manufacturers are not precluded from submitting new models before regulations are enacted, a few manufacturers have expressed concern because final regulations were not adopted prior to January 1, 2006.

For these reasons, the Department requests that these regulations be effective upon filing with the Secretary of State.

## Summary and DOJ Response to Comments

- #1 The proposed regulations will have serious negative consequences and may result in producing less safe situations. Loaded chamber indicators are a poor substitute for actually checking the chamber and magazine of a firearm to determine if the firearm is loaded. The fact that there will still be many handguns made without magazine disconnects will result in confusion that will undoubtedly lead to gun accidents.

*This comment presumably aims to amend the statute by removing the chamber load indicator and magazine disconnect mechanism requirements. Such action would require legislative action beyond the Department’s authority. Accordingly the Department rejects the comment.*

- #2 The proposed regulations would impose restrictions on the re-sale of personal firearms. The regulations should not be applied to previously manufactured firearms.

*The commenter’s understanding of the applicable statute is incorrect. Penal Code (PC) section 12126(b)(4)(5)(6) clearly establishes that the chamber load indicator and magazine disconnect mechanism requirements apply to handguns that are not already on the Roster of Handguns Certified for Sale on the date the requirements become effective. Furthermore, handguns transferred by private parties (non-dealers) do not have to be on the roster.*

- #3 Within each subsection of §§ 968.44( c) the proposed regulation states that "the DOJ-Certified Laboratory *may* conduct the required testing..." (Emphasis added.) By choosing the term "may" as opposed to "shall" the proposed language implies that the DOJ Certified Laboratory has the ultimate choice on whether testing is conducted at all. Use of the term

"may" in this context is a direct conflict with the stated requirements in PC §§ 12130(c).

*The Department has accommodated the comment by replacing "may" with "shall" in subdivisions (c)(1), (c)(2), (c)(3), and (h) of Section 968.44 of the proposed regulations.*

- #4 Within §§ 968.44(c)(1)&(2) the proposed regulation states that "only after ascertaining the firearm has a functioning chamber loaded indicator" may the DOJ certified laboratory conduct the required testing. Specifically, proposed regulation §§ 968.44(d)(1) then defines "a functioning chamber loaded indicator". This proposed regulation acts as a pretest for "functionality" of the chamber loaded indicator. It is also, in large part, a test that is not required under the Penal Code. On the contrary, PC §§ 12130 (d) provides a broader definition that leaves room for the manufacturer's to determine and develop multiple and diverse "chamber loaded indicators" that are understandable to a reasonable adult.

*The Department disagrees with the comment. The Department has statutory authority to further define terms as necessary to implement the statute. The Department also disagrees with the comment that the proposed regulations would prevent manufacturers from developing multiple and diverse chamber load indicators that comply with the regulations and corresponding statute.*

- #5 Section 968.44(h) should begin, "This is the third and final test" and 968.44(f) should be changed from "The 'drop safety requirement for handguns' is the last test..." to "The 'drop safety requirement for handguns' is the second test...." Identifying 968.44(h) as the third and final test simply clarifies that this is a testing step that must be carried out and that a handgun must pass this final test in order to be reported to the DOJ as a "not unsafe" handgun. It is important to state that at the end of the other testing procedures, the laboratory must determine that the chamber load indicator and/or magazine disconnect mechanism meets all of the requirements for chamber load indicators and magazine disconnect mechanisms.

*The Department disagrees with the comment. The Department believes no further clarification is necessary as the text of the proposed regulation makes it abundantly clear that a handgun shall be reported as "not unsafe" only if has "passed the required testing and the lab has confirmed that any chamber load indicator and/or magazine disconnect identified ... continues to function upon completion of the required testing." The current and the proposed amendments are consistent with the applicable statute in specifically identifying only two of the "not unsafe" handgun requirements as "tests."*

- #6 Subsection (d)(1)(C) limits the possible location of the "'loaded' indication" and thus the possible future design of firearms. There was nothing contained in the authorizing statute (SB 489) that required the "chamber load indicator" be limited to being on the top or the side of the firearm.

*The Department has accommodated the comment by deleting the phrase "the top or either side of" from proposed regulation Section 968.44(d)(1)(E).*

- #7 There should be a requirement that in addition to the load indicator itself, the explanatory text or graphics must also be of a contrasting color.

*The Department has partially accommodated the comment by amending proposed regulation Section 968.44(d)(1)(C) so that explanatory text/graphics must be “of a distinct visual contrast to the firearm.”.*

- #8 The 24 inch visibility standard in Section 968.44 (d)(1)(C) effectively requires the user to pick up the handgun to determine whether it is loaded, which is an inherently dangerous act for an untrained user or bystander. The Department should consider either mandating a minimum size of any text or graphics on firearms, or increase the distance to 36 inches.

*The Department disagrees with the comment. The statute does not require the chamber load indicator to be visible from a distance that would make picking up the handgun unnecessary.*

- #9 The 24 inch visibility standard in Section 968.44 (d)(1)(C) should be increased to at least 36 inches to accommodate a taller person with longer arms.

*The Department disagrees with the comment. The Department believes 24 inches is consistent with the standard intended by the phrase “readily visible” as used in the statute. Given the relatively small size and limited surface space on most handguns, 36 inches would be an unreasonable standard.*

- #10 The proposed regulations include a requirement that the chamber loaded indicator be visible at a distance of 24 inches. There is no requirement in the Penal Code that necessitates this addition to the regulations. The chamber loaded indicator is designed to let the person in possession of the firearm examine the firearm to determine if it is loaded. There is no evidence supporting the 24 inch requirement, as different shooters will examine their firearm at varying distances from their eyes depending on multiple variables. All that is required under statutory law is that the device be "readily visible."

*The Department disagrees with the comment. The Department believes the 24 inch standard is reasonable and consistent with the statutory requirement that the chamber load indicator be “readily visible”. A chamber load indicator that is not visible from at least 24 inches could not be considered “readily visible”.*

- #11 The proposed regulation uses the term "normal visual acuity," but it does not define "normal visual acuity." If the standard is to be determined by a person's "visual acuity," then a specific "visual acuity" should be used, such as 20/20.

*The Department agrees with the comment to the extent that the phrase “normal visual acuity” does not provide any additional clarity. The Department believes removal of this phrase will not change the implied standard of normal or average vision. Accordingly, the Department has amended the proposed regulation by removing the phrase “to a person of*

*normal visual acuity” from 968.44(d)(1)(C).*

- #12 The originally proposed regulation 11 CCR 968.44(d)(1)(A) specifies that a functioning chamber load indicator must include permanently displayed explanatory text or graphics that are “readable by a person of normal visual acuity.” The modified proposed regulations deleted the “normal visual acuity” requirement. DOJ should add back into the final regulations the minimal requirement that the explanatory text and/or graphics be readable by a person of normal visual acuity. If the text and/or graphics are so small that they are not readable, the requirements of the law are not being met.

*The Department disagrees with the comment. The phrase “normal visual acuity” was removed in response to a comment because it provided no additional clarity. The Department does agree that text and/or graphics that are unreadably small do not meet the statutory requirements. Accordingly, the Department has amended proposed regulation Section 968.44(d)(1)(b) to require a minimum of height of 1/16th inch for each letter of explanatory text and/or graphics.*

- #13 The text of §968.44(d)(1)(B) which requires that the “[t]he chamber load indicator [be] of a distinct color to that of the firearm” suggests that the entire chamber load indicator must be a distinct color from the firearm, whether or not the indicator is indicating the presence of a cartridge in the chamber. It is a well-recognized convention in the design and manufacture of safeties on firearms that, when a contrasting color is used, the contrasting color is not *always* visible, but is visible when *only when* a warning is being conveyed. A deviation from this well-understood and widely recognized principle of color application would almost certainly result in confusion. Accordingly, we believe it is better, and far safer, to be consistent with the practice of introducing a contrasting color only when indicating the presence of a round in the chamber.

*The Department has accommodated the comment by amending proposed regulation Section 968.44(d)(1)(C) and (D) by requiring only the “loaded” indication portion to be of contrasting color and only visible when there is a round in the chamber.*

- #14 While it is common for firearms equipped with a loaded chamber indicator feature to use color contrast on a portion of the feature (“‘loaded’ indication”) that is designed and intended to provide a user with a tactile and/or visual indication of the presence (or absence) of a cartridge in the chamber of the firearm, nothing contained in the authorizing statute (SB 489) requires that a “chamber load indicator” be of a distinct color contrast to that of the firearm. To the extent the proposed regulation will require a distinct color contrast, despite the lack of legal authority requiring it, the regulation should be revised to make clear that this requirement only applies to the “‘loaded’ indication”.

*The Department disagrees with the comment that it lacks the authority to require a contrasting color. The Department believes the contrasting color requirement is reasonable and consistent with the statutory requirement that the chamber load indicator be “readily visible”. Absent a contrasting color, it would not be possible for a chamber*

*load indicator to be “readily visible”. The Department has accommodated the comment by amending proposed regulation Section 968.44(d)(1)(D) and (E) by requiring only the “loaded” indication portion to be of contrasting color and visible only when there is a round in the chamber.*

- #15 Not just the chamber load indicator itself, but the distinction between the “loaded” and “not loaded” indication should be clearly visible at 36 inches. Also, the distinction needs to be clearly evident, not only when the handgun is being held at arms length ready to shoot, but at other times as well, when the user’s eyes may be farther from the handgun.

*The Department disagrees with the comment. PC section 12125(c) clearly states that a chamber load indicator means a device “that plainly indicates that a cartridge is in the firing chamber.” The statute does not require indication that the pistol is “not loaded.”*

- #16 Nothing in the Penal Code requires the explanatory graphics to be permanent. Thus, the proposed language exceeds the authority authorized by the statute. Additionally, the term permanent is an impossibility, as a file, sand, mill, or any other household tool can easily remove any etchings within a firearm.

*The Department disagrees with the comment. Notwithstanding the commenter’s specious argument “permanent” graphics are an impossibility, the Department believes the legislative intent of the statute is for the explanatory graphics to be permanent. While molecular scientists might correctly argue that nothing is really “permanent”, we believe that as used in these regulations, “permanent” will be understood by any reasonable person to mean the graphics must be designed to last for the life of the handgun under normal use. Rather than establishing an unreasonable standard such as being “file” or “sander” proof, the term simply confirms that temporary graphics, such as stickers that could be torn off or would wear off in a few years, are unacceptable..*

- #17 Nothing in the Penal Code requires that the chamber loaded indicator be of a different color than the pistol. It does require that the chamber loaded indicator be “readily visible.” Though some firearm manufacturers and importers use chamber loaded indicators of varying colors, there are many alternatives of being “readily visible.” For instance, many chamber loaded indicators are “readily visible” because they protrude from the surface of the pistol. Some are both different in color and protrude above the surface. The proposed definition forecloses on alternatives methods that manufacturers and/or importers may use to improve chamber loaded devices by limiting what the statute intended to allow.

*The Department disagrees with the comment. The Department has statutory authority to further define terms as necessary to implement the statute. The Department believes that only use of a contrasting color will enable a chamber load indicator to meet the statutory requirement of being “readily visible.”*

- #18 The Department should add the P.C. Section 12126(c) requirement that a user should not have to refer to a user’s manual or other resource to indicate whether the gun is loaded.

*The Department has accommodated the comment by amending proposed regulation Section 968.44(d)(1)(F) to include that statutory requirement that the user should not have to refer to a user's manual or other resource to determine the firearm is loaded.*

- #19 Does the DOJ intend to act as the final arbiter on these (regulatory) issues? Now that the DOJ has accepted responsibility to clarify these new terms, can manufacturers, dealers and owners rely on the DOJ to know the answers to their specific questions?

*While the Department determines which regulations it intends to adopt, they must be reviewed for statutory authority and consistency by the Office of Administrative Law. As far as responding to questions from manufacturers, dealers, and owners, the Department will make every effort to answer specific questions regarding these regulations and all other firearm regulations or statutes under its purview.*

- #20 The time line to respond to the proposed regulations does not take into consideration the thousands of lawful gun enthusiasts who might have input to oppose the proposed regulations.

*The Department disagrees with the comment. The proposed regulations have been made available for public comment in strict accordance with the Administrative Procedures Act.*

- #21 When SB 489 was enacted an exemption was included for those handgun models that have been placed on the roster prior to the new requirements becoming operative. However, the proposed revised text not only does not include this exemption, but it adds specific criteria for the loaded chamber indicator that were not included in the original verbiage of the law. These additional criteria are significant and would deny the firearms manufacturers the discretion to implement the loaded chamber features in a manner most consistent with the design and intended function of their products. Such specificity in rule making likely exceeds the administrative authority of the office attempting to issue these changes to the law as the Senate intended it.

*The Department disagrees with the comment. The exemption referred to in the comment is not affected (still applicable) by the proposed regulations. The Department has statutory authority to further define terms as necessary to implement the statute. The Department also disagrees with the comment that the proposed regulations would deny manufacturers discretion in developing chamber load indicators.*

- #22 Several manufacturers have model handguns that have a chamber loaded indicator feature that is achieved by a notch or slot cut into the top of the slide - sometimes referred to as a "witness hole" -- that permits one to look literally into the chamber of the firearm and to see for themselves whether there is a cartridge of ammunition present in the chamber or not regardless of the color of the cartridge shell casing relative to the slide or any other part of the firearm. If no cartridge is present in the chamber, they will see nothing. Again, this is accomplished without "color" but through "contrast." Of course, a "witness hole - chamber loaded indicator" would have adjacent to it the explanatory text and/or graphic. The issue

of "witness hole - chamber loaded indicators" was discussed at the March 2004 stakeholder meeting. The Department's representative, Randy Rossi, indicated that a "witness hole" would be a chamber loaded indicator assuming the accompanying text and/or graphic were otherwise satisfactory. A "witness hole" has and serves no other design purpose or function other than to be a chamber loaded indicator. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) recognizes a "witness hole" as a chamber loaded indicator. So does the Office of the Attorney General of the state of Massachusetts, which requires centerfire semiautomatic handguns to have a chamber loaded indicator or a magazine disconnect. We recommend that the regulation be revised to read as follows: "The explanatory text and/or graphics must be legible and the "loaded" indication are of a distinct color contrasts, through the use of color or otherwise, to that of the firearm so that it is plainly visible".

*The Department disagrees with the comment. Firearms Division Director Randy Rossi may have indicated at the March 2004 stakeholder meeting that a "witness hole" with adequate color contrast, and with explanatory text and/or graphics theoretically could meet the definition of a chamber load indicator set forth in PC section 12126(c). However, he did not indicate that a "witness hole" now on the market necessarily would meet the definition. It is irrelevant that a "witness hole" now on the market is considered by other entities to be a chamber load indicator, especially in the case of Massachusetts, considering that state's definition was rejected by the legislature when SB 489 was amended on June 28, 2004.*

- #23 Regarding the "distinct color" requirement included in section 968.44(d)(1)(B), we strongly believe that although the DOJ considers this a feature for the benefit of the user, so he/she can visually determine whether there is a round in the chamber, the DOJ is actually making an adverse determination to the safe handling of firearms that could have tragic consequences. Our research has shown that, due to the heat and high frequency shock wave produced by the discharge of a firearm, color-marking paints will not adhere to the LCI with continued use of the pistol. Paints are merely color, not surface treatment; it is just a matter of time before the paint begins to chip or flake off. The user may then be deceived into believing that LCI indicated that there is not round in the chamber (because the paint markings are not visible), when in fact the opposite may be true. Further, with normal use of the firearm, the expulsion of gases and gunpowder residue from the cycling of a firearm at time of discharge will blacken the parts surrounding the area of the ejection port. If the user is relying on the visual color indicator of the LCI, that person may be misled into believing that the LCI does not indicate that a round is in the chamber (because the coloring is masked with residue), when in fact the opposite may be true. Only with constant cleaning can this dangerous situation be avoided, but the use of commercially available gun cleaning solvents deteriorates the paint on the LCI and again leads to the potentially dangerous situation discussed above.

*The Department disagrees with the comment. The Department believes the contrasting color requirement is reasonable and consistent with the statutory requirement that the chamber load indicator be "readily visible". Absent a contrasting color, it would not be possible for a chamber load indicator to be "readily visible". The method of achieving the*

*color contrast, such as by the application of paint, is left to the firearm manufacturer.*

- #24 The minimum height requirement of 1/16th inch for explanatory text in Section 968.44(d)(1)(B) should be increased.

*The Department disagrees with the comment. The Department believes the 1/16th inch standard, which is also the federal ATF standard for identification markings on firearms, is reasonable given the limited space on a handgun.*

- #25 It is not clear whether the terms "engraved, stamped or etched" in 968.44(d)(1)(A) would allow a situation in which the engraving is actually formed as part of a part when it is originally molded since the molding process does not involve engraving, stamping or etching. We recommend the text be changed to read, "permanently depicted (including, but not limited to, depiction by engraving, stamping, etching, molding or other means).

*The Department has accommodated the comment by amending proposed regulation Section 968.44(d)(1)(A) to allow explanatory text or graphics to be "displayed by engraving, stamping, etching, molding, casting, or other means of permanent marking."*

- #26 The current proposed regulations, contradict the laws of metallurgy and manufacturing technology and do not appear to be required by statute SB 489. As written Section 968.44(d)(1)(A) and (C) are contradicting. Engraving, stamping or etching will not produce a distinct color. Only painting will produce a distinct color and paint is not and can not be made permanent. Regulations A & C are impossible to implement as written. The word "color" must be deleted to allow the regulation to be implemented.

*The Department has accommodated the comment by removing the word "color" with "visual" in proposed regulation Section 968.44(d)(1)(C).*

- #27 We are opposed to the language in Subsection (d)(1)(B) of §968.44 requiring each letter of explanatory text to have a minimum height of 1/16 inch. This requirement is, of course, not found in the plain language of the authorizing statute. If the legislature had wanted to require a minimum height for "each letter" of text, they could have easily done so. They did not. This requirement can actually have the unintended consequence of making it more difficult to comply with the statute. The explanatory text will necessarily be specific to the device it accompanies. Some devices may require more text than others and one manufacturer may decide it best for their product to include more text than another might decide is appropriate for their product. Due to the necessarily small parts involved and the limited space available upon which to place text on or adjacent to a chamber load indicator, we believe it is best to provide manufacturers with the maximum flexibility possible to design their products to meet the requirements of the statute. While ATF mandates that a serial number have a minimum font size of 1/16th inch (See 27 CFR 478.92(a)(1)(i)), the space on a frame or receiver where a manufacturer can place a serial number is much greater. The space considerations are simply not the same. We are aware of at least one manufacturer that has text on the device where some of the letters are less than the

minimum height -- yet to enlarge those letters would partially obscure them from view. We continue to recommend that new subsection (d)(1)(B) be stricken or, in the alternative, the language should be revised so that the minimum height requirement is based on an average size of the letters in the text such as "Each letter of explanatory text must have an average minimum height of 1/16 inch."

*The Department disagrees with the comment. The fact that the authorizing statute does not include language establishing a minimum size does not make preclude the Department from establishing a minimum standard in the regulations. Objective standards such as the height requirement are helpful not only to the testing laboratories that initially review these devices and to the Department, which reviews the laboratories' findings, but also to firearm manufacturers. An objective standard prevents the Department from acting in an arbitrary and capricious manner. An objective standard also removes any uncertainty about what font size is large enough to meet SB 489's mandate that the text incorporated with or adjacent to the chamber load indicator is "explanatory" to "a reasonably foreseeable adult user of the pistol ... whether a cartridge is in the firing chamber."*

*The Department believes that text any smaller than 1/16th of an inch will not be sufficiently visible to be "explanatory" as required pursuant to Penal Code Section 12126(c). As stated in the comment, the 1/16th standard is consistent with federal ATF standards for serial numbers. Accordingly, the Department also rejects the commenter's proposed language.*

- #28 We are concerned by the fact that the Department has still not finalized the regulations to implement SB 489 despite the fact that the statute became effective on January 1, 2006. The rulemaking process began with a stakeholder meeting in March of 2004, nearly two years ago. We remain frustrated by the fact that the January 25, 2006 revisions to the proposed regulations were not insubstantial. The Department's delay amounts to an unlawful regulatory ban on new model handguns.

*The Department disagrees with the comment. The promulgation of these regulations has been in strict compliance with Administrative Procedures Act (APA) standards relative to the length of time an agency has to complete a rulemaking. The originally proposed regulations have been amended several times as a result of public comments. While some of the amendments were "not insubstantial", they were sufficiently related to the originally proposed regulations and all changes were made available for additional public comment. This seemingly protracted rulemaking demonstrates the Department's willingness to give objective consideration to, and often implement, recommendations received from interested parties. As intended by the APA, the final result is the promulgation of optimal regulations with full public participation.*

*This process has not amounted to "an unlawful regulatory ban on new handgun models. There is no reason why firearm manufacturers are precluded from submitting new models before regulations are enacted. Although the regulations may not yet be in place, SB 489 is in effect. Even without regulations, the Department can determine whether a new*

*handgun model complies with SB 489. This is especially true for new models with a magazine disconnect mechanism, considering that there is no apparent dispute about the meaning of that feature.*

- #29 We strongly object to the conflict of interest inherent in Alyson Merrilees, the former legislative counsel to Senator Scott, the sponsor of SB 489, who was intimately involved in the legislative debate over SB 489, now being counsel to the Department and involved in counseling the Department with respect to this particular rulemaking process. This conflict of interest is particularly troubling given the fact that the legislature amended SB 489 to remove the requirement of a "color contrast."

*The Department disagrees with the comment. Of course, it is critical for the Firearms Division to have legal advice about its regulatory and enforcement actions. Ms. Merrilees may have prior knowledge of SB 489 and its author's intent because of her previous employment as a member of Senator Scott's staff, but her knowledge does not create a "conflict of interest" in her current position as a Deputy Attorney General (DAG) in the Firearms Division of the Department of Justice. The on-line legal dictionary FindLaw defines "conflict of interest: as 1: a conflict between the private interests and the official or professional responsibilities of a person in a position of trust and 2: a conflict between competing duties (as in an attorney's representation of clients with adverse interests). DAG Merrilees' employment with the Firearms Division does not meet either of the aforementioned criteria. She is a professional who is ethically required to vigorously defend the interests of her current employer, the California Department of Justice.*

- #30 While we continue to believe that the prior phrasing ("permanently displayed") in Subsection (d)(1)(A) of §968.44 was easily understandable to manufacturers and easy for a certified laboratory to ascertain and should have been left unchanged, we appreciate that the Department has adopted, in large measure, our alternative proposed language.

*The Department disagrees with the comment. The Department believes the additional specification ("by engraving, stamping, etching, molding, casting, or other means of permanent marking") will add to the clarity and understanding of the regulation. As indicated in the comment, the Department has adopted "in large measure", language previously recommended by the commenter.*

- #31 We strongly oppose Subsection (d)(1)(C) of §968.44(C) as currently drafted because it requires that the explanatory text and/or graphics AND the "loaded" indication both must be "of a distinct color contrast to that of the firearm." We respectfully submit that proposed § 968.44(d)(1)(C) is invalid as written, because it is inconsistent and in conflict with SB 489. Although the plain language of this statute contains no requirement regarding color, the Department of Justice's proposed § 968.44(d)(1)(C) would require both that the explanatory text and/or graphic AND the "loaded" indication be of a distinct color contrast to that of the firearm. As we have repeatedly commented, this makes § 968.44(d)(1)(C) exceed the scope of its authorizing statute. The legislature could have required a "distinct color contrast" if it wanted to by simply including that language in the statute. Not only

did the legislature not include such language, they specifically amended the bill on May 12, 2003 to remove that requirement. Prior to the May 12, 2003 amendment to SB 489, the bill included language defining a "chamber load indicator" as a "plainly visible device in a contrasting color." See SB 489 § 1(c) (May 5, 2003 amendments to S.B. 489). The introductory paragraph referred to a "chamber load indicator that is plainly visible in a contrasting color." *Id.* Both of these references to "color contrast" were removed from the final bill by the May 12, 2003 amendment. See SB 489 (codified as amended at Cal. Penal Code § 12126 (2003)). Where, as here, the legislature plainly considered but ultimately rejected a "color contrast" requirement, there can be no doubt that the "color contrast" requirement your office proposes for § 968.44(d)(1)(C) exceeds and conflicts with the legislation authorizing the regulation.

We also remain concerned that the Department interprets, or will interpret, "color contrast" to mean or require the application of paint. We would strongly urge the Department to reject such an interpretation. While the use of paint may be appropriate on some models of firearms, it should not be a uniform requirement because to do so may foreclose excellent chamber load indicators. Paint cannot be made "permanent" See proposed §968.44(d)(1)(a). What is important is that there is a contrast so that the text and/or graphic can be read. A contrast can be obtained without necessarily requiring "color." For example, pursuant to federal law (18 U.S.C. § 923(i); 27 CFR 478.92(a)(1)), all firearms must have a legible serial number. There is no requirement that color be used to render the serial number legible. Yet, through the process of applying the serial number - "engraving, casting, stamping (impressing)"-the serial number is legible.

*The Department generally disagrees with the comment although the proposed regulations have been amended to partially accommodate the comment by requiring the explanatory text and/or graphics to be of a distinct "visual" contrast rather than a distinct "color" contrast. The Department believes it essential that the "loaded" indication be of distinct color contrast in order to meet the "readily visible" standard specified in the authorizing statute. The method of achieving the color contrast, such as by the application of paint, is left to the firearm manufacturer.*

*The Department also dismisses the commenter's contention that the contrasting color requirement exceeds the scope of the authorizing statute because early versions of the bill included "color contrast" language. Early versions of the bill required the entire chamber load indicator to be of a contrasting color, a requirement that was removed from SB 489 on May 12, 2003, so that the definition of a "chamber load indicator" in SB 489 would be consistent with the definition adopted pursuant to regulations that were in place at the time in the state of Massachusetts. However, the bill was subsequently amended on June 26, 2003 to include a much stronger and more comprehensive definition. That definition remained in the bill, throughout its pendency in the legislature, and when it was signed by the Governor. The June 26, 2003 amendments did not address the issue of color.*

- #32 As currently written, Section 968.44(d)(2) does not specify the trigger be pulled from its normal rest position. We recommend the following text, "A functioning magazine

disconnect mechanism must prevent the ammunition primer from being struck with the pull of the trigger or attempted pull of the trigger, from the normal rest position of the trigger, whenever a detachable magazine is not fully inserted into the pistol.”

*The Department disagrees with the comment. The Department believes proposed regulation Section 968.44(d)(2) accurately reflects the legislative intent that whenever a detachable magazine is not fully inserted into the pistol, the magazine disconnect mechanism must prevent the ammunition primer from being struck with the pull or attempted pull of the trigger regardless of the position of the trigger.*

- #33 In order to satisfy the intent of SB 489, DOJ regulations should require that most people in a randomly selected sample of California adults be able to immediately recognize whether or not the handgun is loaded when they pick the gun up. Specifically, we propose that the standard be that 90% of a randomly selected sample of California adults, in a sample size large enough to have confidence intervals, of 5% or less, be able to correctly identify whether or not the handgun in question is loaded at the time that they pick up. We believe that any less stringent regulations would not satisfy the intent of SB 489, and would not be adequate to protect the California public from accidental handgun injuries and deaths.

*The Department disagrees with the comment. The Department has neither the statutory authority to establish the type of standards recommended in the comment, nor the funds that would be needed to undertake the type of study required to establish those standards.*

## Comments Key

(Ordered Alphabetically by Commenter's First Name)

Carlos A. Guevara (GLOCK, Inc.) - Letter  
Comments: #23

David Peterson - Letter  
Comments: #2

Emanuel Kapelsohn (The Peregrine Corporation) - Oral Comment w/written transcript (Letter)  
Comments: #1

George Zagurski - Letter  
Comments: #20

Griffin Dix (California Million Mom March Chapters of the Brady Campaign) - 4 Letters  
Comments: #5, #7, #8, #9, #12, #13, #15, #18, #24, #33

Hector Flores - Letter  
Comments: #21

Irv Edwards M.D. and Bill Durston M.D (Cal/ACEP) - Letter  
Comments: #33

Jack Scott, State Senator - 2 Letters  
Comments: #7, #8, #18, #24

Jason Davis (CRPA and CAFR) - Letter  
Comments: #3, #4, #10, #11, #16, #17, #19

Jeffrey Reh (Beretta) - Letter  
Comments: #25

Karen Michail Shah (Women Against Violence) -Letter  
Comments: #8, #9, #18

Kevin B. Reid, Sr. (Sturm, Ruger & Company, Inc.) - 3 Letters  
Comments: #13, #26, #27, #28, #31

Laura Cutilletta ( Legal Community Against Violence)- 2 Letters  
Comments: #5, #7, #8, #9, #12, #13

Lawrence Keane (SAAMI) - 5 Letters  
Comments: #6, #14, #22, #27, #28, #29, #30, #31

Ronald P. Borgio (Smith & Wesson) - 2 Letters  
Comments: #22, #26, #27, #32

Samuel Hoover (Legal Community Against Violence) - Letter  
Comments: #7, #8, #9, #12, #13